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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 John Joseph Byrne,

10 Petitioner,

11 v.

12 Charles L. Ryan, *et al.*,

13 Respondents.
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No. CV-18-02431-PHX-JJT (ESW)

ORDER

15 At issue is the Report and Recommendation (“R&R”)(Doc. 27) submitted by United
16 States Magistrate Judge Eileen S. Willett, recommending that the Court dismiss with
17 prejudice the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1)
18 and deny Petitioner’s request to dismiss the Petition without prejudice (Doc. 26). Petitioner
19 timely filed an Objection thereto (Doc. 28) and Respondents filed a Response to that
20 Objection (Doc. 29).

21 Upon *de novo* review, the Court adopts Judge Willett’s R&R in its entirety,
22 including the underlying reasoning, which is legally and logically correct. Petitioner’s state
23 conviction became final for purposes of AEDPA on September 16, 2010, at the latest, when
24 the time for him to seek review at the Arizona Supreme Court of his conviction and
25 sentence, as affirmed by the Arizona Court of Appeals, expired. AEDPA’s one-year
26 limitations period therefore began to run the next day and expired on September 16, 2011.
27 He did not file the instant Petition until August 2018—almost seven years too late. As
28 analyzed by Judge Willett, Petitioner presented no basis for either statutory or equitable

1 tolling and presented no evidence of actual innocence which would be necessary for
2 triggering of the *Schlup* gateway analysis. *See Schlup v. Delo*, 513 U.S. 298, 327 (1995).

3 Understanding this would be a problem after reading Respondents' Answer,
4 Petitioner sought to save his ability to re-raise the Petition in the future by filing a Motion
5 to Concede the Habeas Corpus (Doc. 26), in which he sought dismissal of this Petition
6 without prejudice. But as correctly analyzed by Judge Willett in the R&R, there is nothing
7 to save. Even were Petitioner to refile a petition in the future on the issues he has raised, it
8 would still be untimely without exception and thus subject to the same limitations bar. Thus
9 any such subsequent petition raising these issues would necessitate the same work by
10 Respondents and the Court to return to exactly the same conclusion—that the petition
11 would be untimely without excuse. That would work an inefficiency to the Court, and a
12 prejudice on Respondents. Nothing in Petitioner's Objections addresses this point at all.
13 Therefore,

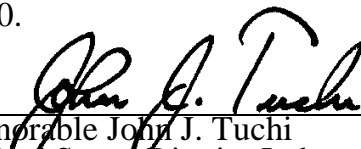
14 IT IS ORDERED overruling Petitioner's Objections to the R&R (Doc. 28) and
15 adopting the R&R in whole (Doc. 27).

16 IT IS FURTHER ORDERED dismissing with prejudice the Petition for Writ of
17 Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) and denying Petitioner's request
18 within his Motion to Concede the Habeas Corpus (Doc. 26) to dismiss without prejudice.

19 IT IS FURTHER ORDERED denying a certificate of Appealability and leave to
20 proceed in forma pauperis on appeal. Dismissal of the Petition here is justified by the
21 plainest of procedural bars.

22 IT IS FURTHER ORDERED that the Clerk of Court shall terminate this matter.

23 Dated this 8th day of January, 2020.

24 
25 Honorable John J. Tuchi
26 United States District Judge
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